

922 KAR 2:190. Civil penalties.

RELATES TO: KRS Chapter 13B, 199.896, 199.990

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Licensee" means the owner and operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
 - 1. Board of education;
 - 2. Private school;
 - 3. Faith-based organization;
 - 4. Government agency; or
 - 5. Institution.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 9.

Section 2. Types of Violations. The cabinet shall issue a licensee a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a criminal records check and a child abuse and neglect check required in accordance with:

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

c. Remove a person with a substantiation of child abuse or neglect from contact with a child in care in accordance with:

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

- d. Comply with a suspension of services; or
- e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8) or 2(10);
- 2. Falsifying records;
- 3. Operating contrary to approved licensed services; or
- 4. Changing location without prior approval of the cabinet.
- (2) Type B violation if:
 - (a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120; and
 - (b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:
 - 1. Failing to:
 - a. Complete one (1) of a person's background checks required in accordance with:
 - (i) 922 KAR 2:090, Section 6; or
 - (ii) 922 KAR 2:110, Section 5;
 - b. Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;
 - c. Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:110, Sections 5(3) through 5(5);
 - d. Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);
 - e. Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7); or
 - f. Maintain sufficient records on a child in accordance with 922 KAR 2:110, Section 3;
 - 2. Releasing a child to a person who is not designated by the child's parent to pick up the child;
 - 3. Leaving a child alone with an underage caregiver; or
 - 4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice described in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 9(3) and 9(8); and

(b) Subject to a civil penalty of no more than \$1000 for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within ten (10) days in accordance with 922 KAR 2:090, Section 9(2) and 9(3); and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b)-(d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or
- (c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights described in Section 5 of this administrative regulation.
- (6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. Notice that a civil penalty has been levied shall:

- (1) Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:
 - (a) Licensee; or
 - (b) Director of the child-care center or the director's designee in accordance with 922 KAR 2:110; and
- (2) Specify:
 - (a) The violation for which a civil penalty has been levied;
 - (b) The amount of the civil penalty;
 - (c) That, in accordance with KRS 199.990(4), the civil penalty shall:
 1. Not exceed \$1,000 for each occurrence;
 2. Be made payable to the Kentucky State Treasurer; and
 3. Be mailed to the Office of Inspector General;
 - (d) That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);
 - (e) That payment of a civil penalty shall be stayed if an appeal is requested; and
 - (f) That the cabinet may:
 1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and
 2. Take other action in accordance with KRS 199.896(9).

Section 5. Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section 13.

- (2) An appeal shall not limit the authority of the cabinet to:
 - (a) Issue an emergency order pursuant to KRS 13B.125(2); or
 - (b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

- (a) Sixty (60) days have lapsed since the latter of either:
 1. The notice in accordance with Section 4 of this administrative regulation; or
 2. Completion of the administrative appeal process upholding the civil penalty; and
- (b) A licensee fails to:
 1. Pay the civil penalty levied against the child-care center;
 2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or
 3. Comply with the payment arrangement for the civil penalty.
- (2) The cabinet may approve an amendment to a payment arrangement if:
 - (a) A request for an amendment is received from the licensee; and
 - (b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:
 1. The individual circumstances of the licensee or child-care center; and
 2. Factors specified in KRS 199.896(8).
- (3) The cabinet may terminate collection of a civil penalty if the:
 - (a) Licensee dies;

(b) Cabinet is unable to locate the licensee; or

(c) Cabinet's continued pursuit of the civil penalty would exceed the:

1. Amount of civil penalty; or

2. Public benefit. (27 Ky.R. 2624; 3121; eff. 5-14-2001; TAm eff. 10-29-2004; TAm eff. 8-1-2005; 39 Ky.R. 912; 1735; eff. 3-8-2013.)